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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

E. I. DU PONT DE NEMOURS & COMPANY,
Petitioner,

v.

PHILLIPS PETROLEUM COMPANY, PHILLIPS 66 COMPANY, and PHILLIPS DRISCOPIPE, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err by not following this Court's decision in *United States* v. *Adams* and holding instead that as a matter of law the essential discovery of the invention of the Du Pont patent, clearly stated in its specification, cannot be read with the patent claims to sustain their validity, where as a consequence those claims were held invalid as anticipated by the work of Phillips' employees who did not make that essential discovery?

2. Did the Court of Appeals err in reversing the District Court's application of an equitable rule of patent claim construction and holding instead that as a matter of law a rigid, legalistic rule of claim construction must be applied?

STATEMENT PURSUANT TO RULE 28.1

The subsidiaries and affiliates of E. I. du Pont de Nemours & Company, other than wholly-owned subsidiaries, are listed below:

Du Pont Canada, Inc.
Biotech Research Laboratories, Inc.
Conoco Exploration Limited
Molecular Biosystems, Inc.

Though it is not a subsidiary or affiliate of Du Pont, the Seagram Company, Ltd. (through wholly-owned subsidiary companies) owns approximately 23 percent of Du Pont's common stock.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Petitioner E. I. du Pont de Nemours & Company ("Du Pont") prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Federal Circuit (A1-25) is reported at 849 F.2d 1430 (1988). The opinion of the United States District Court for the District of Delaware (A26-181) is reported at 656 F.Supp. 1343 (1987)[1]

[1] "A" citations are to pages of the appendix to this petition. "CA" citations are to the appendix in the Court of Appeals.

JURISDICTION

The judgment of the Court of Appeals was entered on June 15, 1988. The Court of Appeals denied Du Pont's petition for rehearing on July 14, 1988. This petition is filed within 90 days thereafter. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This case is an action against Phillips Petroleum Company and two of its subsidiaries (collectively, "Phillips") for infringement of Du Pont's U.S. Patent 4,076,698 ("the '698 patent").

None of the findings of fact made by the District Court were disturbed on appeal. The Court of Appeals reversed solely on a single perceived error of law. It held that the District Court erred in reading the patent claims with the essential discovery of the invention, clearly stated in the specification, to sustain the validity of those claims.[2]

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[2] If the Court of Appeals was correct on that point of law, it also was correct in holding claims 2, 5, 10 and 14 of the '698 patent invalid as anticipated. Because the Court of Appeals vacated and remanded as to the other patent claims in issue (claims 1 and 12), its holdings on other points of law which we believe were erroneous are not ripe for review, e.g., the failure by the Court of Appeals to follow this Court's decision in *Herman & MacLean* v. *Huddleston*, 459 U.S. 375 (1983), and instead holding that as a matter of law a finding of willful infringement requires proof by clear and convincing evidence rather than by a preponderance of the evidence.

The Invention of Du Pont's '698 Patent

The '698 patent relates to copolymers whose principal component is ethylene and whose other component is a higher-alpha-olefin having from 5 to 18 carbon atoms.[3] Ethylene polymers, also known as polyethylenes, are one of the most widely used plastics.

In the mid-1950's, Du Pont discovered an unexpected way to achieve significant improvements in two key properties of ethylene polymers. The two properties were impact strength, which is a measure of a polymer's ability to sustain a sudden mechanical blow, and environmental stress crack resistance, which is a measure of the length of time a polymer can be subjected to a stress load without cracking.

What Du Pont's researchers discovered was that copolymers having superior impact strength and superior environmental stress crack resistance could be made by copolymerizing ethylene with a comonomer which is a higher alpha-olefin having five or more carbon atoms. The Court of Appeals did not disturb the District Court's finding that:

> "The invention of the '698 patent was not the discovery that ethylene could be copolymerized with higher alpha-olefins, nor was it the discovery of a new comonomer content range, a new density range, or a new X-ray crystallinity range (Tr. 135, 607-08). The invention was the discovery that melt processable

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[3] Polymers are large molecules made by chemically joining together many small molecules known as monomers. A copolymer (or "interpolymer") involves joining different monomers (A3).

Alpha-olefins are characterized by a carbon-carbon double bond at one end of the molecule and may have two or more carbon atoms. Ethylene, an olefin with two carbon atoms, may be polymerized alone to make polyethylene or may be copolymerized with other monomers (or "comonomers") to make ethylene copolymers. There are two lower alpha-olefin comonomers—propylene, with 3 carbons, and butene (or butene-1), with 4 carbons.

The '698 patent relates to copolymers of ethylene with higher alpha-olefins having from 5 to 18 carbon atoms. The more commonly used higher alpha-olefins include pentene (5 carbons), hexene (6 carbons), octene (8 carbons) and decene (10 carbons). A copolymer of ethylene with the higher alpha-olefin hexene would be referred to as an ethylene-hexene copolymer.

> copolymers of ethylene and higher alpha-olefins having five or more carbon atoms unexpectedly can achieve impact strength and environmental stress crack resistance properties that are superior to those obtained with free-radical polyethylene, with linear polyethylene and with comparable copolymers of ethylene (that is, with similar densities and melt index) and the lower alpha-olefins propylene (3 carbons) and butene (4 carbons) (Tr. 86-93)." (A34).

Nor did the Court of Appeals disturb the District Court's findings that this discovery was clearly disclosed in the specification of the '698 patent (A28-29, 36-37, 74-75) and that the superior impact strength and environmental stress crack resistance that could be achieved by the discovery "are essential elements of the invention" (A38).

The Work of Witt and Leatherman

To support its defense that the asserted claims of the '698 patent are invalid, Phillips relied heavily on work done in the mid-1950's by two of its employees, Witt and Leatherman. In 1954-55, Witt and Leatherman made ethylene copolymers using both lower alpha-olefins (propylene and butene) and higher alpha-olefins (pentene and hexene).

However, Mr. Leatherman admitted at trial that he and Mr. Witt did *not* discover that the higher alpha-olefin copolymers could have impact strength or stress crack resistance superior to that of the lower alpha-olefin (propylene and butene) copolymers (A44). Phillips also failed to prove that the Witt and Leatherman higher alpha-olefin copolymers had impact strength or stress crack resistance superior to the lower alpha-olefin copolymers they had made (A46). Indeed, the District Court found that the impact strength of the Witt and Leatherman butene copolymers was superior to that of their pentene and hexene copolymers—just the opposite of Du Pont's discovery (A43)—and there was no difference between their butene, pentene and hexene copolymers in stress crack resistance (A45).

Furthermore, Witt and Leatherman not only failed to make the essential discovery of the invention of the Du Pont '698 patent, but their work was kept secret until after the Du Pont inventors made their discovery (A65). It was not until 1958, when a corresponding foreign patent application issued as a patent, that the Witt and Leatherman work was disclosed to the public (CA9703-856).[4] Witt and Leatherman filed a U.S. patent application based on their work in August 1956, about six months after the parent application for the Du Pont '698 patent was filed (A43).[5] The Witt and Leatherman U.S. patent application was rejected by the Patent Office and eventually abandoned (A43 n.7).

At that point, Phillips still had not discovered the significant improvement in impact strength and environmental stress crack resistance that could be achieved with higher alpha-olefin copolymers. In the early 1960's, Phillips continued to make lower alpha-olefin butene copolymers which it had been selling commercially since 1958 (A48).

Phillips did not introduce its first ethylene higher alpha-olefin copolymer to the market until 1967 (A48). As the District Court found:

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[4] The 1958 date of that foreign patent precluded its being prior art to the '698 patent (35 U.S.C. § 102(a) and (b)). The fact that Witt and Leatherman did their work before the Du Pont inventors made their discovery was not revealed until discovery was taken in this action. This was years after the '698 patent had issued.

[5] The fact that the Witt and Leatherman work was kept secret until after the Du Pont inventors had made their discovery does not compel the conclusion that the work was "abandoned, suppressed or concealed" and thereby disqualified as prior invention under 35 U.S.C. § 102(g), particularly where as here a U.S. patent application was filed and foreign patents issued on that work. *Paulik* v. *Rizkalla*, 760 F.2d 1270 (Fed.Cir. 1985); *Kimberly-Clark Corp.* v. *Johnson & Johnson*, 745 F.2d 1437, 1444 n.1 (Fed.Cir. 1984); *Correge* v. *Murphy*, 705 F.2d 1326, 1330 (Fed.Cir. 1983).

> "The manner in which Phillips entered the higher alpha-olefin copolymer business supports the significance of the invention of the '698 patent. The evidence also strongly supports the inference that Phillips initiated its program to switch from butene to hexene only after it learned of Du Pont's discovery that the higher alpha-olefin copolymers have superior properties." (A48).[6]

Phillips has made great use of the discovery of the Du Pont '698 patent—superior environmental stress crack resistance and impact strength—in marketing its higher alpha-olefin copolymers (A126). An example is a 1969 Phillips brochure which describes the "Special Characteristics" of an ethylene-hexene copolymer:

> "This resin has outstanding container environmental stress crack resistance and impact strength that is superior to other HDPE [high density polyethylene] resins of equivalent density and melt index." (A126).

In 1980, after Du Pont's '698 patent had issued, Phillips held a "Summit Meeting" to consider using noninfringing butene as a comonomer in place of hexene (A136). The conclusion reached at that "Summit Meeting" was that it could not switch back to butene because,

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[6] Du Pont's Canadian patent (corresponding to the '698 patent) issued in June 1963. Almost immediately, in July 1963, Phillips initiated a research program to study "ESC [environmental stress crack] improvements resulting from incorporation of larger chain olefins" (A49). The District Court found:

> "Because of the timing, a strong inference persists that Phillips turned to a closer examination of copolymers with higher alpha-olefins only after the superior properties were disclosed in 1963 in Du Pont's Canadian patent." (A50).

This Phillips research program commenced in July 1963 and resulted in the conclusion that environmental stress crack resistance was "greatly increased" by using a higher alpha-olefin (such as hexene) in place of butene (A50-51). One of the Phillips researchers who coauthored a 1965 internal report on the use of higher alpha-olefins, Mr. Kitchen, testified that he was "surprised" by the large increase in stress crack resistance achieved with hexene in place of butene and that similar results were obtained with other higher alpha-olefins (A51).

> "Butene does not impart the stress cracking resistance to ethylene copolymers that hexene does" (A126; A83),

and because,

> "Phillips largest volume . . . resins as now made will be unacceptable in competition with other resins if butene were used instead of hexene" (A83).

The Phillips patent attorney who evaluated the '698 patent in 1978 and 1979, understood that an essential feature of the invention of that patent was the significant improvement in properties achieved with higher alpha-olefins over the lower alpha-olefins propylene and butene (A135).

Phillips has produced ethylene higher alpha-olefin copolymers in ever increasing quantities since beginning its production of hexene copolymers in 1967 (A79). Since the '698 patent issued in 1978, Phillips has sold more than 4 billion pounds of hexene copolymers (A79).

The Proceedings Below

The District Court tried the liability issues from July 21 to August 18, 1986. On February 26, 1987, the District Court issued a 128 page opinion and a judgment that held, inter alia, that Phillips had not met its burden of proving that claims 1, 2, 5, 10, 12 and 14 of the '698 patent were invalid (A138 and 182).[7]

Claims 2, 5, 10 and 14 of the '698 patent, do not explicitly state that the claimed copolymers have superior impact strength or stress crack resistance.[8] The District Court followed what it

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[7] The District Court also held that Du Pont had met its burden of proving that 82 Phillips products are within the scope of one or more of those claims, and that Du Pont had not met its burden of proving that Phillips' infringement was willful so as to increase any award for damages under 35 U.S.C. § 284 (A138-39, 182-83).

[8] The claims at issue in this action, claims 1, 2, 5, 10, 12 and 14 are reproduced in the appendix to the Court of Appeals opinion (A24-25). Claim 1 recites a specific numerical limitation for Elmendorf tear strength, which is an impact strength test, and claim 12, which claims the copolymers in the form of pipe, recites a specific numerical limitation for hoop stress resistance, which is an environmental stress crack resistance test (A35).

believed to be the holding of *United States* v. *Adams,* 383 U.S. 39, 48-49 (1966), that essential elements disclosed in the specification are to be read with the claims in ascertaining the invention (A37). Thus, the District Court held:

> "In this case the superior impact strength and environmental stress crack resistance which are essential elements of the invention are distinctly disclosed in the specifications as the surprising aspect of the copolymers involved and they must be read with the claims in ascertaining the invention." (A38).

On appeal, the Court of Appeals held, inter alia, that "the district court was wrong as a matter of law in reading into the claims at issue the two extraneous property limitations" (A9), and therefore reversed the District Court's judgment that Phillips did not prove invalidity under 35 U.S.C. § 102(g) for claims 2, 5, 10 and 14 and vacated the judgment that Phillips did not prove invalidity for claims 1 and 12 (A23).[9]

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[9] The Court of Appeals also vacated the judgment that Du Pont proved infringement and affirmed the judgment that Du Pont did not prove willful infringement, remanding to the District Court for further proceedings consistent with its opinion (A23)

REASONS FOR GRANTING THE WRIT

A. The Court Of Appeals Erred By Not Following This Court's Decision In *United States* v. *Adams* And Holding Instead That As A Matter Of Law The Essential Discovery Of The Du Pont Patent, Clearly Stated In The Specification, Cannot Be Read With The Patent Claims To Sustain Their Validity

The Court of Appeals reversed on the sole ground that "the district court was wrong as a matter of law in reading into the claims at issue the two extraneous property limitations" (A9). In so holding, the Court of Appeals erred.

The District Court (A37) correctly relied upon this Court's decision in *United States* v. *Adams*, 383 U.S. 39, 49 (1966), for the proposition that "claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention." The District Court holding on this point was:

> "In this case the superior impact strength and environmental stress crack resistance which are essential elements of the invention are distinctly disclosed in the specifications as the surprising aspect of the copolymers involved and they must be read with the claims in ascertaining the invention" (A38).[10]

United States v. *Adams* involved a patent on a battery. As explained in the opinion, "[t]he Adams invention was the first practical, water-activated, constant potential battery which could be fabricated and stored indefinitely without any fluid in its cells." 383 U.S. at 43. It consisted of two electrodes, magnesium and cuprous chloride, in a container and was "activated . . . merely by adding water" which acted as the electrolyte. Id. The specification of the Adams patent stated

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[10] The two property limitations, which were read with the claims in ascertaining the invention, are essential to the invention, not extraneous as characterized by the Court of Appeals. The normal meaning of extraneous is the opposite of essential, i.e., not essential.

that activation by a water electrolyte was an essential part of the invention.[11] The claims at issue, however, did not explicitly state that the battery could be activated by a water electrolyte.

In sustaining the validity of those claims, this Court relied on that essential part of the invention to distinguish the prior art, holding that "the fact that the Adams battery is water-activated sets his device apart from the prior art." Id. at 48. This Court then proceeded to construe the claims at issue:

> "It is true that Claims 1 and 10, *supra*, do not mention a water electrolyte, but, as we have noted, a stated object of the invention was to provide a battery rendered serviceable by the mere addition of water. While the claims of a patent limit the invention, and specifications cannot be utilized to expand the patent monopoly, *Burns* v. *Meyer,* 100 U.S. 671, 672 (1880); *McCarty* v. *Lehigh Valley R. Co.,* 160 U.S. 110, 116 (1895), it is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention, *Seymour* v. *Osborne,* 11 Wall. 516, 547 (1871); *Schriber-Schroth Co.* v. *Cleveland Trust Co.,* 311 U.S. 211 (1940); *Schering Corp.* v. *Gilbert,* 153 F.2d 428 (1946). Taken together with the stated object of disclosing a water-activated cell, the lack of reference to any electrolyte in Claims 1 and 10 indicates that water alone could be used. Furthermore, of the 11 claims in issue, three of the narrower ones include references to specific electrolyte solutions comprising water and certain salts. The obvious implication from the absence of any mention of an electrolyte—a necessary element in any battery—in the other eight claims reinforces this conclusion." Id. at 48-49.

The Court of Appeals, however, distinguished *United States* v. *Adams* on the basis (A7) that this Court did not read a "water electrolyte" limitation into or with the claims but

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[11] One of the stated "objects" of the invention was:

" 'to provide a battery which is relatively light in weight with respect to capacity' and which 'may be manufactured and distributed to the trade in a dry condition and rendered serviceable by merely filling the container with water' " 383 U.S. at 42.

merely considered the fact that the claimed battery could be water activated as an unexpected advantage of the claimed battery in determining nonobviousness. This was error.

The Court of Appeals ignored that in *Adams,* this Court first read the water electrolyte limitation into or with the claims of the Adams patent to distinguish a specific prior art reference (Skrivanoff) for purposes of novelty—not obviousness.[12] Skrivanoff disclosed a battery having an electrode made with magnesium and an electrode made with a paste containing cuprous chloride and other materials. The electrolyte, however, was not water, but a strong chemical solution strengthened by sulfuric acid. This Court held:

> "We believe that the Court of Claims was correct in concluding that the Adams battery is *novel.* Skrivanoff disclosed the use of magnesium in an electrolyte completely different from that [water] used in Adams." Id. at 50 (emphasis added).

This Court's holding in the same paragraph, that Skrivanoff would not negative novelty because it had been shown to be inoperable when the strong chemical electrolyte was added, confirms that this Court was dealing with novelty in that paragraph, not obviousness. The evidence established that Adam's expert initially experienced difficulty in making an electrode from a paste containing cuprous chloride. When he did make that electrode, he combined it with a magnesium electrode to prepare a battery. However, when the strong non-

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[12] Whether an essential limitation stated in the specification is read into a claim or read with a claim as a matter of claim construction is a matter of semantics. The result in *Adams* is the same regardless of whether that decision is viewed as reading into the claims the essential "water activated" limitation or as construing the word "battery" in the claims with that essential limitation as meaning a "water activated battery." Likewise, the result is the same here regardless of whether the District Court's decision is viewed as reading into the claims the disclosed essential two property limitation or as construing the word "interpolymer" in the claims with that disclosed essential limitation as meaning an "interpolymer having superior impact strength or environmental stress crack resistance." The testimony at trial established that this is exactly how the claims of the '698 patent would be read by one skilled in this art (CA297).

water electrolyte disclosed in Skrivanoff was added, the battery exploded. 383 U.S. at 48; Respondents' Brief at 63-64, *United States* v. *Adams,* 383 U.S. 39 (1966). Thus, as this Court explained:

> "An inoperable invention or one which fails to achieve its intended result does not negative novelty." 383 U.S. at 50.[13]

After deciding the novelty issue, this Court then read the water electrolyte limitation with the claims to distinguish the prior art for purposes of nonobviousness. Id. at 51-52.

The Court of Appeals misconstrued this Court's decision in *Adams* in an effort to harmonize it (A7-8) with the statement in *McCarty* v. *Lehigh Valley Railroad Co.,* 160 U.S. 110, 116 (1895):

> "[W]e know of no principle of law which would authorize us to read into a claim an element which is not present, for the purpose of making out a case of novelty or infringement. The difficulty is that if we once begin to include elements not mentioned in the claim in order to limit such claim and avoid a defence of anticipation, we should never know where to stop."

If placed in context, however, this language does not conflict with *Adams.*[14] The limitation that the patentee in *McCarty*

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[13] This Court's statement, that "it is even open to doubt whether cuprous chloride was a functional element in Skrivanoff" (Id. at 50), was not a finding of inoperability. The statement was based on testimony by the Government's expert that he had no information on whether the Skrivanoff cathode after being mixed with the other chemicals in the battery would still contain cuprous chloride (Id. at 47-48). That testimony was as follows:

> " 'Q. Have you any information as to what the residual product, after the combination is made, would contain, and would it still contain cuprous chloride?
>
> 'A. I have the disclosure of the patentee, and that is all the information I have.' (R. 383-4)"

Respondents' Brief at 63, *United States* v. *Adams,* 383 U.S. 39 (1966).

[14] This Court in *Adams* cited *McCarty,* along with *Burns* v. *Meyer,* 100 U.S. 671, 672 (1880), for the rule that the "specifications cannot be utilized to expand the patent monopoly." 383 U.S. at 49. Here, the claims of the '698 patent were contracted, not expanded, by the District Court's decision.

sought to read into the claims—springs upon which the ends of a claimed railroad car bolster could be supported—was not disclosed in the patent as the essential or important feature of the invention. Here superior stress crack resistance and impact strength are disclosed in the '698 patent as essential and important features of the invention.

To the extent that this Court's *Adams* decision in doing equity tempered the rigid rule stated in *McCarty,* it followed the line of this Court's decisions applying the equitable doctrine of equivalents or non-equivalents (reverse equivalents) in determining infringement; i.e., reading a limitation out of a patent claim, *Graver Mfg. Co.* v. *Linde Co.,* 339 U.S. 605 (1950), or reading a limitation into a patent claim, Id. at 608-9 and *Westinghouse* v. *Boyden Power Brake Co.,* 170 U.S. 537, 568 (1896), decided just one year after *McCarty.* The claims of a patent should be construed or read in the same manner for purposes of both infringement and validity.[15]

B. The Court Of Appeals Erred In Reversing The District Court's Application Of An Equitable Rule Of Patent Claim Construction And Holding Instead That As A Matter Of Law A Rigid, Legalistic Rule Of Claim Construction Must Be Applied

Instead of following this Court's *Adams* precedent, the Court of Appeals woodenly adhered to the rigid, legalistic rule, stated in several of its decisions, that Courts cannot alter what the patentee has chosen to claim as his invention and limitations from the specification are not to be read into the claims. A6, A8-9, citing *Sjolund* v. *Musland,* 847 F.2d 1573, 1581 (Fed.Cir. 1988); *Loctite Corp.* v. *Ultraseal Ltd.,* 781 F.2d 861,

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[15] This was recognized by the Court of Appeals in *Texas Instruments* v. *U.S. Intern. Trade Com'n,* 846 F.2d 1369, 1372 (Fed.Cir. 1988):

> "The reverse doctrine of equivalents is invoked when claims are written more broadly than the disclosure warrants. The purpose of restricting the scope of such claims is not only to avoid a holding of infringement when a court deems it appropriate, but often is to preserve the validity of claims with respect to their original intended scope."

867 (Fed.Cir. 1985); *SSIH Equipment S.A.* v. *U.S. Intern. Trade Com'n.*, 718 F.2d 365, 378 (Fed.Cir. 1983).

However, the Court of Appeals frequently has departed from that rigid rule in construing patent claims on the issue of infringement to achieve equitable results, reading in limitations from the specification or prosecution history. For example, in its decision in this case, the Court of Appeals relied on its *Loctite* decision (781 F.2d at 867) for the proposition that "[g]enerally, particular limitations or embodiments appearing in the specification will not be read into the claims" (A6). But in *Loctite,* the Court of Appeals read a limitation from the prosecution history into the claims of the '012 patent in suit on the issue of infringement (781 F.2d at 867), and concluded its discussion on the issue of literal infringement:

> "In sum, we interpret 'anaerobic' for both patents as the ability to cure anaerobically, i.e., in the absence but not in the presence of oxygen, and to do so rapidly and spontaneously. The district court added as a requirement the ability to do so at room temperature without the addition of transition metal. We read that added limitation into the '012 claims but not into the '400 claim." 781 F.2d at 869.

The Federal Circuit seems to be applying two rules of claim construction. An equitable rule is applied for purposes of infringement—limitations may be read into the claims from the specification or prosecution history. Yet a rigid, legalistic rule is applied for purposes of validity—no limitation may be read into the claims, even where as here it is the essential discovery of the invention.

This is an inequitable result, particularly here where Du Pont made a very significant discovery that is the invention of the '698 patent. Phillips appropriated that discovery after it became public, selling enormous quantities of copolymers based on Du Pont's discovery. Yet, the work at Phillips of Witt and Leatherman, who did not make that discovery, is held by the Court of Appeals to anticipate the invention claimed in the '698 patent on the basis of a rigid rule of claim construction. This is wrong as a matter of law and as a matter of equity.

This Court did equity in *Adams* by applying an equitable rule of claim construction on the issue of validity. The District Court here heeded that decision and also did equity by applying the same rule. The Court of Appeals held as a matter of law that it was error for the District Court to do equity.

This Court has reminded the federal judiciary of the importance of exercising their equitable powers:

> "... Congress took care to arm the courts with full equitable powers. For it is the historic purpose of equity to 'secur[e] complete justice.' ..." *Albermarle Paper Co.* v. *Moody,* 422 U.S. 405, 418 (1975).

By not following this Court's decision in *Adams,* and instead following a rigid, legalistic path, the Court of Appeals for the Federal Circuit erred in preventing the District Court from exercising its equity jurisdiction.

CONCLUSION

For the reasons stated, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Federal Circuit.

Respectively submitted,

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